



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Release Date: 2/22/2013

Contact Person:

Identification Number:

Date: November 29, 2012

Telephone Number:

UIL: 4945.04-04

Employer Identification Number:

Legend:

Company =

Dear

This is in response to your letter dated April 2, 2012 in which you requested certain rulings with respect to sections 4945 and 117 of the Internal Revenue Code ("Code").

Background:

You have been recognized as an organization exempt under § 501(c)(3) of the Code and are classified as a private foundation within the meaning of § 509(a). You operate a scholarship program for the children of the Company's current, full-time, U.S. employees. You have operated your scholarship program for several decades and have received prior approval of your grant making program multiple times over the years as you have made material changes to your scholarship program. You are currently seeking to make material changes to the applicant pool and award amounts provided under the scholarship program. You are making six material changes:

- a) Expand the group of eligible applicants to include children of active, full-time, permanent employees of Company and/or its subsidiaries in its controlled group worldwide;
- b) Amend the definition of eligible employees to those in job grade 20 or below, or comparable compensation bands;
- c) Expand the list of higher education institutions which recipients may attend to include recognized and accredited post-secondary educational institutions as described under § 170(b)(1)(A)(ii) both within the U.S. and outside the U.S.;
- d) Add a further division in your applicant pool such that four pools exist along the axes of two and four year institutions and U.S. and non-U.S. applicants from which you will choose no more than 25 percent of each pool;
- e) Decrease the maximum annual number of awards from 100 for four-year institutions and 50 for two-year institutions to a total of 100 awards; and
- f) Reduce the annual award amount from \$1,500 a year to \$1,000 a year.

These are the only changes that will be made to your program. Your program will continue to limit the overall number of recipients to 25 percent or 100 whichever is smaller. No component of the U.S. or non-U.S. program will be used to recruit or retain employees of Company, and

once granted, the awards may not be rescinded if the recipient's parent ceases to be employed with Company. Recipients will continue to be selected by an independent committee where no committee members are directors, officers, or employees of Company. The recipients must show the proper records indicating that they are attending a recognized institution. The recipients continue to be determined on the basis of overall academic achievement, leadership, and civic involvement. Finally, recipients remain free to choose their own course of study without influence from you or Company.

With regard to educational institutions outside the U.S attended by award recipients, your process will include (1) verifying that any non-U.S. institution which recipients may attend is nationally recognized or is recognized by the country's Ministry of Education and is described in §170(b)(1)(A)(ii), and (2) performing a reasonable search of publicly available information (specifically the relevant OFAC lists and UN Security Council's lists) to determine that the institution is not involved in activities relating to terrorism, terrorist financing, or any other form of terrorist support.

Rulings Requested:

1. The grant-making procedures as amended and described meet the requirements of § 4945(g)(1) and that scholarships granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of § 4945(d)(3).
2. Grants awarded under these procedures are eligible for the exclusion from income provided by § 117(a) to the extent such grants are actually used for qualified tuition and related expenses within the meaning of § 117(b).

Law:

Section 117(a) of the Code provides that gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in § 170(b)(1)(A)(ii).

Section 117(b) of the Code defines "qualified scholarship" to mean any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses. It also defines "qualified tuition and related expenses" as tuition and fees required for the enrollment or attendance of a student at an educational organization described in § 170(b)(1)(A)(ii), and fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

Section 4945(d)(3) of the Code defines a taxable expenditure as any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that § 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary if it is demonstrated that the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of § 117(a) and is to be used for study at an educational organization described in § 170(b)(1)(A)(ii).

Section 53.4945-4(a)(3)(ii) of the Income Tax Regulations ("regulations") provides that a grant

for study is not a "taxable expenditure" only if the grant is awarded on an objective and nondiscriminatory basis, the grant is made pursuant to a procedure approved in advance by the Commissioner, and it is demonstrated to the satisfaction of the Commissioner that the grant constitutes a scholarship which is excluded from gross income under § 117(a) and is to be utilized for study at an educational institution described in § 170(b)(1)(A)(ii).

Section 53.4945-4(b)(2) of the regulations states that the group from which grantees are chosen must be sufficiently broad so that the giving of grants to members of such group would be considered to fulfill a purpose described in § 170(c)(2)(B). Thus, ordinarily the group must be sufficiently large to constitute a charitable class.

Section 53.4945-4(d)(1) of the regulations provides that the approval procedures do not contemplate specific approval of particular grant programs but instead one-time approval of a system of standards, procedures, and follow-up designed to result in grants which meet the requirements of § 4945(g). Thus, such approval shall apply to a subsequent grant program as long as the procedures under which it is conducted do not differ materially from those described in the request to the Commissioner.

Revenue Procedure 76-47, 1976-2 C.B. 670, sets forth guidelines for determining whether a grant made by a private foundation under an employer-related program to a child of an employee is a scholarship that meets the provisions of section 117(a) of the Code (as that section read before the enactment of the Tax Reform Act of 1986). If a private foundation's program satisfies the conditions set forth in sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in section 4.08, the Service will assume that a grant meets the provisions of section 117(a) (as that section read before the enactment of the Tax Reform Act of 1986).

Analysis:

As a general rule, distributions to individuals for the purpose of study, travel, or other similar purposes from a private foundation are taxable expenditures. Section 4945(d)(3). If such distributions qualify as a scholarship under § 117, however, and are distributed pursuant to an objective and nondiscriminatory plan that is preapproved by the Commissioner such grants will not be taxed under § 4945. Section 4945(g). Here, based on the representations that the program's procedures in awarding grants will continue to comply with sections 4.01 through 4.08 of Rev. Proc. 76-47 and the information submitted, an award under the proposed program would qualify as a scholarship under § 117(a) to the extent that it is used for qualified tuition and related expenses as defined in § 117(b). The scholarship program, and all subsequent amendments submitted to the Internal Revenue Service, has been previously approved by the Commissioner. You intend to keep all of the previously approved scholarship program procedures, including an external selection committee that is unrelated to Company, the basis by which applicants will be judged, and the record keeping requirements for recipients. You have represented that the above changes are the only changes requiring the approval of the Commissioner. See § 53.4945-4(d)(1).

The first two changes listed provide for an increase to the applicant pool from U.S. employees to worldwide employees. This change furthers the plan's charitable purpose by increasing the number of applicants. Section 53.4945-4(b)(2). While you are expanding the list of eligible institutions to include institutions outside of the U.S., you have committed to ensuring that each institution is described in § 170(b)(1)(A)(ii). Section 53.4945-4(a)(3)(ii). Additionally, the

number of recipients remains sufficiently large to not create private benefit concerns and sufficiently small to not create a form of compensation. Rev. Proc. 76-47, supra. Finally, the remaining changes are not part of the criteria for approval by the Commissioner under § 4945(g), and therefore do not prevent your plan from obtaining such approval.

Rulings:

1. The grant-making procedures as amended and described meet the requirements of § 4945(g)(1) and scholarships granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of § 4945(d)(3).
2. Grants awarded under these procedures are eligible for the exclusion from income provided by § 117(a) to the extent such grants are actually used for qualified tuition and related expenses within the meaning of § 117(b).

This ruling will be made available for public inspection under § 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437